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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 536

JOSEPH P. PETROWSKI,

Petitioner,

vs.

CLIFFORD C. NUTT, COLONEL AIR CORPS, UNITED STATES ARMY, THE COMMANDING OFFICER, HAWAIIAN AIR DEPOT, HICKAM FIELD, T. H.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

JOSEPH P. PETROWSKI,
In Propria Persona,
745 Bishop Street,
Honolulu, T. H.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 536

JOSEPH P. PETROWSKI,

Appellant,

vs.

CLIFFORD C. NUTT, Colonel Air Corps, United States Army, The Commanding Officer, Hawaiian Air Depot, Hickam Field, T. H.,

Appellee

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Petitioner herein prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, entered May 28, 1947, affirming a judgment in favor of the Respondent (Appellee).

Opinion Below

The Opinion in the United States Circuit Court of Appeals for the Ninth Circuit has been reported, and can be found in the certified record sent up to this Court from the Ninth Circuit, and can be further identified in 161 F. (2d) 938 (R. 72). Extension of time to include Jan. 17, 1948, for

filing of Petition and Brief granted by Justice Douglas, Nov. 17, 1947.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered May 28, 1947. The jurisdiction of this Court is invoked under Sections 344-350, Title 28, U. S. C. A., also Section 377 of Title 28, U. S. C. A., and Article III of The Constitution of the United States. Reference is made regarding jurisdiction to the TRANSCRIPT OF RECORD, upon appeal from the District Court of the United States for the Territory of Hawaii, to the United States Circuit Court of Appeals for the Ninth Circuit, certified to the Supreme Court.

Question Presented

The question here presented, is whether the United States District Court for the Territory of Hawaii had jurisdiction, in proceedings regarding an original petition in the nature of writs of mandamus. The cause being the petitioner contending that his statutory rights under the Veterans Preference Act of 1944, have been violated not only under the statute but also his rights under the Constitution of the United States as well.

Statute Involved

The Veterans Preference Act of 1944, and, in particular, Sections 14, 15, and 18 of said act. Not desiring to inflict repetitious recital of the sections referred to, reference is hereby made to the TRANSCRIPT OF RECORD, aforementioned under the heading of jurisdiction.

Statement of Case

Petitioner, (Appellant) was employed as a Principal Property and Supply Clerk, (CAF-6). His employment in such capacity was approved by the Secretary of War,

and his status in such employment, has been determined, through examination of official records, by the United States Civil Service Commission, that petitioner was honorably discharged from active duty, including war service, in the U. S. Army on May 2, 1922, and that he had continuous service at the Hawaiian Air Depot since April 28, 1942. He therefore qualifies as a veteran war preference eligible who has completed a trial period of employment, and his appeal was entertained administratively by the United States Civil Service Commission, under the provision of Section 14 of the Veterans Preference Act of 1944. The petitioner was dismissed from his employment for alleged misconduct, removing him on October 30, 1944 from the above mentioned position. Actually, in fact, petitioner was removed on September 7, 1944, by being suspended, and not being allowed to continue on an active duty status during the 30 day notice period, and was forcibly removed by military police and prevented from entering upon his employment during the thirty days notice. No reason has been given up to this writing to petitioner why he could not work actively at his employment for thirty days following the notice of suspension dated September 7, 1944. No information or belief has been advanced to indicate to date, the statutory requirement that "(except where there is a reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed) under Section 14, he could be removed from active duty on summary notice without being allowed to actively work when he was ready, willing, and able to work during the 30 days advance notice. The Circuit Court of Appeals held that the lower court was correct in the judgment that it could not entertain original proceedings in the nature of mandamus in the case before the bar. To this holding of the lower courts the petitioner respectfully contends to so deny judicial review would infringe his rights not only under the statute, but likewise

his rights under the Constitution. It is submitted that the Circuit Court of Appeals erred in construing that the lower court was correct in holding it was without jurisdiction for the reason that even though the Congress placed limitations in the issuance of such writs, to do so by legislation, would constrict the broad avenues of approach of the citizen in his right of petition the Government for a redress of grievances. It is contended that the right of petition is not confined to laying a petition on the desk of the Speaker of the House for example, but, at the option and election of the citizen can be presented to the judicial branch of our government if he desires redress. To hold otherwise is to in a measure, emasculate the effectiveness of our Courts, in the maintenance of a balance in our Government.

Specifications of Errors to Be Urged

The Circuit Court of Appeals erred:

1. In holding that the referred to cases in the judgment of May 28, 1947, were decisive where the nature of the employment and the relief sought are somewhat comparable, for example: In *Ballf* v. *Kranz,* 9 Cir., 82 F. (2d) 315, that in said case (Ballf) his military duty extended beyond the 15 days authorized by 10 U. S. C. A., Section 371, the statute at the time of the Balff incident. His voluntary resignation and consent to military duty for more than 15 days, caused the forfeiture of any and every right that he may have had, *by abandonment,* as a Civil Service employee, and that therefore no statutory right that he may have had before his resignation had been violated. In the present case the petitioner did not supinely abandon any of his constitutional or statutory rights or guarantees, but was forcibly removed under protest by the military police. Further, the courts below erred in failing to hold and find that the case of

Balff was inapplicable, for the reason, that in said case, no right recognized and protected by law, had been violated in said case, whereas in the case at bar, rights guaranteed to petitioner by acts of Congress, had been violated and petitioner had been illegally deprived of said rights. The courts below erred in holding and finding that although petitioner had been illegally removed from his position by appellee, the courts were without a remedy to correct such injustice.

That in errors apparent on the face of the Transcript of Record will reveal in the case at bar, "unreasonable searches and seizure," by the military police action. In "Bills of Attainder," under the "color of law," in the petitioner being "black listed" for any "future employment," and this, by an officer of the United States, in an administrative action, and nowhere shown in the record as to such action by appellee being confirmed by the Secretary of War who originally confirmed the employment of the petitioner. This case, from the record, reveals, slavery and involuntary servitude, under the strict literal interpretation of the 13th Amendment has been imposed by the appellee upon the petitioner by the "blacklisting." The record reveals that, "freedom of speech" has been infringed upon by the appellee against the petitioner. If the foregoing is not sufficient, it is further contended by the petitioner, that the lower courts erred in not protecting my rights, privileges, and immunities, constitutionally, by denying this petitioner, from further impairment as a citizen of the United States, from an examination of the record, rights under the 5th, 6th, 7th, 8th, and 14th Amendments to the Constitution of the United States. The courts below further erred in entering the order dismissing the complaint heretofore filed herein.

Reasons for Granting the Writ

No appellate court has decided the question at issue in this case. The imponderables involved are of such serious import that it is contended that this Veterans Preference Act of 1944 should be judicially reviewed at length and detail. Since this legislation was enacted in June, 1944, thousands of veterans have been deprived of their rights in employment, not only the provisions of Section 14 of the statute, but likewise their rights under the Constitution of our nation. The petitioner contends as a disabled veteran, along with hundreds of thousands of other veterans that this statute is not ambiguous, does not need clarifying, or amplification, but does require the implementation of enforcement of the statute by the only instrumentality of the Government of the United States that can so do, and in the estimation of the petitioner, it is only the Supreme Court of the United States that can enforce the honest intent of this law. In the case of *Bell* v. *Hood,* 90 L. Ed. 940 it was held that "Where a right is guaranteed or protected by an express provision of the Federal Constitution, the courts of the United States are not powerless to enforce such right because Congress has not taken the trouble expressly to instruct the Federal Courts to accord such protection." This same *Bell* v. *Hood* case for the petitioner is invoked regarding the manner in which he will claim redress. It is further respectfully contended by the petitioner that a citizen of Hawaii has the same rights in mandamus actions as is invoked in the District of Columbia Courts under the 1801 statute when a portion of the State of Maryland was ceded to form the District of Columbia, and the decisions of any Circuit can be invoked as decisive of issues involved. To construe otherwise would be discriminatory under the 14th Amendment. The compartmentation of laws and statutes is repugnant to our constitutional form of government.

This Maryland statute of 1801 is in the opinion of the petitioner somewhat of a political "Law of Perpetuity," judicially applied, that is outdated and outmoded because it is inherently discriminatory.

Conclusion

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

JOSEPH P. PETROWSKI,
In Propria Persona.
745 Bishop Street,
Honolulu, T. H.,
Petitioner.

January 17, 1948.

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 536

JOSEPH P. PETROWSKI, PETITIONER

v.

CLIFFORD C. NUTT, COLONEL, AIR CORPS, UNITED STATES ARMY, THE COMMANDING OFFICER, HAWAIIAN AIR DEPOT, HICKAM FIELD, T. H.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit (R. 72–74) is reported at 161 F. 2d 938.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on May 28, 1947 (R. 74), and an order denying a petition for rehearing timely filed by petitioner was entered in that court on August 19, 1947 (R. 75). By order of Mr. Justice Douglas dated November 18, 1947, the time for filing a

petition for a writ of certiorari was extended to January 17, 1948 (R. 76). The petition was filed on January 17, 1948. The jurisdiction of this court is invoked "under Sections 344–350, Title 28, U. S. C. A., also Section 377 of Title 28, U. S. C. A., and Article III of the Constitution of the United States" (Pet. 2).

QUESTION PRESENTED

Whether the United States District Court for the Territory of Hawaii has jurisdiction of an original action in the nature of mandamus.

STATUTES INVOLVED

The provisions of the Hawaiian Organic Act and the Veterans' Preference Act which are involved are set forth in the Appendix, *infra*, pp. 7–8.

STATEMENT

This suit was instituted by petitioner in the United States District Court for the Territory of Hawaii, requesting the issuance of a writ in the nature of a writ of mandamus to respondent directing and commanding him to reinstate petitioner as a civilian employee of the United States Government at the Hawaiian Air Depot, Hickam Field, Oahu, Territory of Hawaii, or to show cause why such reinstatement should not be made (R. 4–10). The allegations of the complaint may be summarized substantially as follows: On September 6, 1944, petitioner, an honor-

ably discharged veteran who had been employed for two years theretofore as a property and supply clerk at the Hawaiian Air Depot, was charged with misconduct, and action was taken to effect his removal from the Government service for that cause (R. 5–6, 11–13). Petitioner was given 30 days to reply to the charges, and, on September 7, was notified of a 30-day suspension, pending action thereon (R. 6, 13–15). When petitioner challenged the propriety of the steps taken and insisted on reporting for work as usual, he was forcibly removed by the military police (R. 7, 15–17). Thereafter, on September 19, 1944, petitioner filed a reply to the charges lodged against him, contending that the action taken was not in accordance with the applicable provisions of the Veterans' Preference Act (Act of June 27, 1944, c. 287, 58 Stat. 387, 5 U. S. C., Supp. V, 851–869), as amended August 4, 1947, c. 447 (Public Law 325, 80th Cong., 1st sess.), and that the charges were not, in any event, justified by the facts (R. 7–8, 17–27). This reply, however, was deemed unsatisfactory, and on October 9, 1944, petitioner was removed from his position (R. 8, 29). On the same day, a notice of the discharge was sent to the United States Civil Service Commission, which was advised that there would be objection to petitioner's reappointment to the Federal service (R. 27–28). Petitioner thereupon appealed to the United States Civil Service Commission on October 19, 1944, and was

advised that his case would be investigated and the recommendations of the Commission forwarded to the Commanding Officer at the Hawaiian Air Depot, but that such recommendations were only of an advisory character, and the Commission, in no event, had authority to force petitioner's reemployment (R. 34–37).[1]

Respondent having filed a motion to dismiss (R. 30–33), the district court, after hearing, filed its "Decision" (R. 38–49) and, on April 20, 1945, entered an order dismissing the complaint for lack of jurisdiction (R. 49–50). A petition for rehearing was denied, the district court reiterating its view that it was without jurisdiction to issue a writ of mandamus (R. 62). On appeal to the United States Circuit Court of Appeals for the Ninth Circuit, the judgment of the district court was affirmed (R. 74).

ARGUMENT

This case is an original proceeding requesting relief in the nature of a writ of mandamus. It is too well settled to require extended discussion here that federal district courts have no jurisdiction over such actions, mandamus being available solely as ancillary relief and only in cases "wherein jurisdiction has been acquired by other

[1] The Act of August 4, 1947, c. 447 (Public Law 325, 80th Cong., 1st sess.), thereafter enacted, has so amended the Veterans' Preference Act as now to make it mandatory on administrative officers "to take such corrective action as the Commission finally recommends."

means and by other process" (*Covington & Cincinnati Bridge Co.* v. *Hager,* 203 U. S. 109, 110; *Knapp* v. *Lake Shore & M. S. R. Co.,* 197 U. S. 536; *Insular Police Commission* v. *Lopez,* 160 F. 2d 673 (C. C. A. 1), certiorari denied, 331 U. S. 855; *Ballf* v. *Kranz,* 82 F. 2d 315 (C. C. A. 9), certiorari denied, 299 U. S. 549; *Amchanitzky* v. *Sinnott,* 69 F. 2d 97 (C. C. A. 2), certiorari denied, 292 U. S. 636), which is not the case here. The United States District Court for the Territory of Hawaii is subject to the same jurisdictional limitations, for, in establishing that court, Congress directed that it "shall have the jurisdiction of district courts of the United States, and shall proceed therein in the same manner as a district court" (Hawaiian Organic Act, Act of April 30, 1900, c. 339, § 86, 31 Stat. 158; as amended March 3, 1909, c. 269, § 1, 35 Stat. 838; March 3, 1911, c. 231, § 291, 36 Stat. 1167; July 9, 1921, c. 42, § 313, 42 Stat. 119; 48 U. S. C. 642).[2] Only recently, in *Insular Police Commission* v. *Lopez,*

[2] Jurisdiction beyond that exercised by federal district courts is, of course, present where the particular court, in addition to its status as a district court of the United States, has been vested by statute with general local jurisdiction; thus, the courts of the District of Columbia (*Kendall* v. *United States,* 12 Pet. 524; *Arant* v. *Lane,* 249 U. S. 367, 371) and of Alaska (Act of June 6, 1900, c. 786, § 4, 31 Stat. 322; as amended March 3, 1909, c. 269, § 2, 35 Stat. 839; March 2, 1921, c. 110, 41 Stat. 1203; December 13, 1926, c. 6, § 1, 44 Stat. 919; 48 U. S. C. 101). No such special jurisdiction has been conferred on the District Court for the Territory of Hawaii.

supra, when the First Circuit Court of Appeals announced a similar holding with respect to the similarly constituted district court for Puerto Rico, this Court denied certiorari. 331 U. S. 855 (June 16, 1947).

CONCLUSION

The decision of the court below correctly applies a well settled rule of law. There is no conflict of decisions. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Acting Assistant Attorney General.

PAUL A. SWEENEY,
HARRY I. RAND,
Attorneys.

FEBRUARY 1948.

APPENDIX

1. The Hawaiian Organic Act (Act of April 30, 1900, c. 339, § 86, 31 Stat. 158; as amended March 3, 1909, c. 269, § 1, 35 Stat. 838; March 3, 1911, c. 231, § 291, 36 Stat. 1167; July 9, 1921, c. 42, § 313, 42 Stat. 119; 48 U. S. C. 642), as it appears in the Code, reads, in pertinent part, as follows:

> The said court shall have the jurisdiction of district courts of the United States, and shall proceed therein in the same manner as a district court; and the said judges, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district courts of the United States.

2. The Veterans' Preference Act (Act of June 27, 1944, c. 287, 58 Stat. 387 (5 U. S. C., Supp. V, 863); as amended August 4, 1947, c. 447 (Public Law 325, 80th Cong., 1st sess.) reads, in pertinent part, as follows:

> SEC. 14. No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension

for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specificially and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: *Provided,* That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends: *Provided further,* That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 15 hereof.

U. S. GOVERNMENT PRINTING OFFICE: 1948